HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 109 of 2002 (SS)
(Old No. 36083/1994)

Bikram Singh Chauhan s/o Sri Rudra Singh
P.G.T. Teacher (Drawaing) Vidhya Mandir Inter
College, Sector I, Hardwar ..... Petitioner

Versus

1. BHEL Education Management Board
   Sector I, Ranipur, Haridwar
2. District Inspector of School, Haridwar
3. Sri Virendra Kumar Gupta, P.G.T. Teacher
   Vidya Mandir Inter College, Ranipur
   Haridwar
4. Shambhu Prasad Sundaryal
   P.G.T. Teacher, Vidya Mandir Inter College
   Sector 5, Ranipur, Haridwar ..... Respondents

Dated: 22.2.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Subhash Upadhyay counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.8.1994 and order dated 29.10.1994 annexure IV and VI to the writ petition.

Briefly stated the petitioner was appointed as P.G.T. Teacher (Arts) in Vidya Mandir Intr College Ranipur, Haridwar on 7.8.1981 and his services were confirmed on 20.8.1982. According to the petitioner respondents no. 3 and 4 were also appointed as P.G.T. Teacher in the same institution on 17.6.1982. The petitioner was promoted vide order dated 18.8.1994 to the P.G.T. Senior Scale after completing 13 years of

service. The respondent no. 1 vide order dated 18.8.1994 promoted respondents no.3 and 4 to the post of Vice Principal in the Institution.

The grievance of the petitioner is that he is senior to respondents no. 3 and 4. According to the rules and regulations of the Institution only senior most Teacher can be posted on the post of vice Principal. The respondents have arbitrarily ignored the seniority of the petitioner and promoted the respondents no. 3 and 4 as Vice Principal of the Institution.

Counter affidavit has been filed by the respondents and have submitted that the post of Vice Principal is not one of promotional. It is merely an administrative post to look after various works of the Institutions. The petitioner has not suffered any loss either of seniority or in the pay scale. It has also been stated that the respondents 4 and 5 are more meritorious than the petitioner.

The petitioner in his application dated 11.2.2006 has further mentioned that the respondents have promoted Smt. Rita Goyal and Sri K.N. Pandey as Principal during the pendency of the writ petition.

The Government of Uttaranchal has framed Rules for promotion called the Uttaranchal Government Servants (Criterion For recruitment by Promotion) Rules 2004.. Sub Clause (3) of Rule 1 of the said Rules reads as under:

> *(3) They shall apply to recruitment by promotion to a post or service for which no consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttaranchal Public Service Commission*

(Limitation of Functions) Regulations, 2003 as amended from time to time.

Rule 4 of the Rules provided as under:

4. Criterion for Recruitment by Promotion- *Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department, and to a post in any service carrying the pay scale the maximum of which is Rs. 18,300 or above shall be made on the basis of merit and to the rest of the posts in all services to be filled by promotion. Including a post where promotion is made from a Non-Gazetted post to a Gazatted post or from one service to another service, shall be made on the basis of seniority to the rejection of the unfit.*

The post of Vice Principal and Principal in the Institution is neither a Head of the Department nor above the pay scale of 18,300. Thus certainly it comes within the preview of the Uttaranchal Government Servants (Criterion For Recruitment by Promotion) Rules, 2004. Admittedly, the Intuition is Governed by the Laws and Rules framed by Government from time to time. These rules has also overriding effect on other rules made by the Governor. Rules 2 reads as under:

2. Overriding effect- *These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force.*

Thus the respondents are not justified to promote the persons junior to the petitioner by ignoring his seniority either on the post of Vice Principal or the Principal.

In view of the above, the respondents are directed to consider the promotion of the petitioner on the date when junior to him were promoted, within a month after obtaining certified copy of this order.

According the writ petition is allowed. No order as to costs.

Dated: 22.2.2006 **(Rajesh Tandon, J.)**

*Dhayni